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SONY BMG MUSIC ENTERTAINMENT;
UMG RECORDINGS, INC.;
INTERSCOPE RECORDS; WARNER
BROS. RECORDS INC.; and ARISTA
RECORDS LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SONY BMG MUSIC ENTERTAINMENT, a
Delaware general partnership; UMG
RECORDINGS, INC., a Delaware corporation;
INTERSCOPE RECORDS, a California general
partnership; WARNER BROS. RECORDS
INC., a Delaware corporation; and ARISTA
RECORDS LLC, a Delaware limited liability
company,

Plaintiffs,

v.

JOHN DOE #3,

Defendant.

CASE NO. 3:07-CV-04837-EMC

Honorable Edward M. Chen

***EX PARTE APPLICATION TO CONTINUE
CASE MANAGEMENT CONFERENCE
AND EXTEND TIME TO SERVE
DEFENDANT AND [PROPOSED] ORDER***

1 Plaintiffs respectfully request that the Court continue the case management conference
2 currently set for January 23, 2008, at 1:30 p.m. to April 23, 2008. Plaintiffs further request, pursuant
3 to the Federal Rules of Civil Procedure, Rules 4(m) and 6(b)(1)(A), that the Court grant an
4 additional 90 days to serve Defendant with the Summons and Complaint. As further explained
5 below, Plaintiffs only recently discovered the identity of the Doe defendant in this case, and have not
6 yet filed an amended complaint naming this individual or served Defendant with the summons and
7 complaint. In support of their request, Plaintiffs state as follows:
8

9 1. The initial case management conference is set for January 23, 2008, at 1:30
10 p.m. The Court, acting of its own accord, previously rescheduled the case management conference
11 from the originally scheduled date of December 26, 2007. The current deadline for service of
12 process is January 18, 2008.
13

14 2. Plaintiffs filed their Complaint for Copyright Infringement against Defendant
15 John Doe #3 ("Defendant") on September 20, 2007. Plaintiffs did not have sufficient identifying
16 information to name Defendant in the Complaint, but were able to identify Defendant by the Internet
17 Protocol address assigned to Defendant by Defendant's Internet Service Provider ("ISP") – here,
18 Santa Clara University.

19 3. In order to determine Defendant's true name and identity, Plaintiffs filed their
20 *Ex Parte* Application for Leave to Take Immediate Discovery on September 20, 2007, requesting
21 that the Court enter an Order allowing Plaintiffs to serve a Rule 45 subpoena on the ISP.
22

23 4. The Court entered an Order for Leave to take Immediate Discovery on
24 November 20, 2007, which was promptly served upon the ISP along with a Rule 45 subpoena.

25 5. On January 8, 2008, the ISP responded to Plaintiffs' subpoena, providing
26 Plaintiffs with identifying information including Defendant's name, telephone number, and address.

27 6. Now that Plaintiffs believe they have identified the Doe defendant, they will
28 send Defendant written notice of their copyright infringement claim and attempt to resolve the
dispute without further litigation. If efforts to resolve the dispute fail, Plaintiffs plan to file a First

1 Amended Complaint naming Defendant individually. However, Plaintiffs wish to first give
2 Defendant a reasonable period of time to resolve this matter before naming him in a federal lawsuit.

3 7. There is not a sufficient amount of time prior to the service deadline for
4 Plaintiffs to notify Defendant of their claim, attempt to resolve the dispute, and/or amend the
5 complaint to name Defendant individually and serve Defendant with the Summons and Complaint.

6 8. Given the circumstances of this case, a case management conference is
7 unnecessary at this time, and Plaintiffs respectfully request that the case management conference be
8 continued to April 23, 2008. Plaintiffs also respectfully request an additional 90 days to effectuate
9 service.

10 9. Plaintiffs submit that filing their *Ex Parte* Application for Leave to Take
11 Immediate Discovery demonstrates “good cause” under Rule 4 for an extension of time for service.
12 *See Ritts v. Dealers Alliance Credit Corp.*, 989 F. Supp. 1475, 1479 (N.D. Ga. 1997) (stating good
13 cause standard for service extensions). Unlike a traditional case in which the defendant is known by
14 name and efforts to serve can begin immediately after filing the complaint, in this case Plaintiffs first
15 had to obtain the identity of Defendant through the subpoena to the ISP, a process that was only
16 recently completed. This Court has discretion to enlarge the time to serve even where there is no
17 good cause shown. *Henderson v. United States*, 517 U.S. 654, 658 n. 5 (1996).

18 10. Because the copyright infringements here occurred in 2007, the three-year
19 limitations period for these claims has not expired. *See* 17 U.S.C. § 507(b) (2000). There can thus
20 be no prejudice to the Defendant from any delay in serving the Complaint.
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11. Plaintiffs will provide the Defendant with a copy of this request and any Order concerning this request when service of process occurs.

Dated: January 14, 2008

HOLME ROBERTS & OWEN LLP

By: /s/ Matthew Franklin Jaksa

MATTHEW FRANKLIN JAKSA
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SONY BMG MUSIC
ENTERTAINMENT; UMG
RECORDINGS, INC.; INTERSCOPE
RECORDS; WARNER BROS.
RECORDS INC.; and ARISTA
RECORDS LLC

[PROPOSED] ORDER

Good cause having been shown:

IT IS ORDERED that the case management conference currently set for January 23, 2008, at 1:30 p.m. be continued to April 23, 2008.

IT IS FURTHER ORDERED that, pursuant to the Federal Rules of Civil Procedure, Rules 4(m) and 6(b)(1), Plaintiffs' time to serve the Summons and Complaint on Defendant be extended to April 17, 2008.

Dated: _____

By: _____
Honorable Edward M. Chen
United States Magistrate Judge